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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/804,819	03/13/2001	Robert David Piotrowski	7984	2044

27752 7590 01/28/2003

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EXAMINER

CARTER, MONICA SMITH

ART UNIT PAPER NUMBER

3722

DATE MAILED: 01/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/804,819

Applicant(s)

PIOTROWSKI ET AL.

Examiner

Monica S. Carter

Art Unit

3722

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 November 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11, 16, 17, 20-30, 32, 33, 53-63, 65 and 66 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

- 5) ☐ Claim(s) _____ is/are allowed.

- 6) ☒ Claim(s) 1-11, 16, 17, 20-30, 32, 33, 53-63, 65 and 66 is/are rejected.

- 7) ☐ Claim(s) _____ is/are objected to.

- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.

- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All b) ☐ Some * c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. _____.

3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.

4) ☐ Interview Summary (PTO-413) Paper No(s) _____.

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-11, 16, 17, 20-30, 32, 33, 53-63, 65 and 66 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claims merely manipulate an abstract idea without producing a "useful, concrete and tangible result". An abstract idea by itself never satisfies the requirements of 35 U.S.C. 101. In the present claims, the method for directing a consumer to one or more types of coffee from a plurality of options does not provide a "useful, concrete and tangible result" as required. There is no guarantee that any of the claimed Self-Characterization Cues would direct a consumer to one or more types of coffees. While the claimed invention does meet the requirements of 35 U.S.C. 101 with regards to being "useful" and "tangible", the requirement of being "concrete" has not been satisfied. There is no clear, cut and "concrete" evidence that applicant's claimed invention will perform as claimed.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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3. Claims 1-11, 16, 17, 20-30, 32, 33, 53-63, 65 and 66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kunzler ('763).

Kunzler discloses a method of controlling an automatic coffee machine (9) wherein the automatic coffee machine has a plurality of selectors (1-7) for indicating desired parameters such as the size of coffee desired and the type of coffee desired (e.g. decaffeinated). Kunzler discloses that "this allocation is only an example, and that it may be fashioned for other types of coffee and other beverages, such as hot chocolate, hot water for tea, etc." (see col. 3, lines 30-43). Inherently, the type of beverage to be used in the machine would determine the particular indicia provided on the selectors (which could be presented in any format as desired by the end user, to include a guide/chart and/or modified slide rule). In figure 1, the seven selectors located on the front operating side (8) of the machine (9) provide a guide/chart (see col. 2, lines 24-28 and col. 3, lines 30-31).

Response to Arguments

4. Applicant's arguments filed November 15, 2002 have been fully considered but they are not persuasive.

Applicant argues that the present claims are patentable subject matter under 35 U.S.C. 101. As stated above, the present claims fail to meet all of the requirements of 35 U.S.C. 101. The claims must provide a "useful, concrete and tangible result". As stated above, the claims fail to provide a "concrete" result since there is no guarantee that the claimed Multiple Self-Characterization Cues will direct a consumer to one or

more types of coffee. There are many factors that help a consumer to determine what type of coffee to select (e.g., taste preference, health related concerns, social environment/climate, etc.). It cannot be conclusively determined that the particular Cues as set forth by applicant, will direct a consumer to purchase a particular type of coffee. The examiner, therefore, maintains that the present claims fail to meet the requirements of 35 U.S.C. 101.

Applicant argues that Kunzler fails to disclose varying the type of coffee selected by a consumer. Applicant further states that Kunzler teaches a standard coffee brewer wherein the strength and quantity of the coffee is varied based on a consumer's selected criteria. While Kunzler does disclose varying the quantity of the coffee selected (as set forth in col. 3, lines 30-43) using the selectors, Kunzler also discloses that "this allocation is only an example, and that it may be fashioned for other types of coffee and other beverages, such as hot chocolate, hot water for tea, etc." Clearly, Kunzler discloses varying the type of coffee selected by a consumer.

For the reasons as set forth above, the rejections are maintained.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

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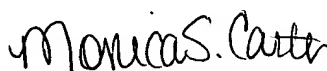
TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Monica S. Carter whose telephone number is (703) 305-0305. The examiner can normally be reached on Monday-Thursday (8:00 AM - 5:30 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrea L. Wellington can be reached on (703) 308-2159. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

January 27, 2003


MONICA CARTER
PATENT EXAMINER